No. 141837

IN THE

MICHIGAN SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v.

ANGEL MORENO, JR.

Defendant-Appellant

ON APPEAL FROM THE COURT OF APPEALS
(Owens, P.J., O'Connell, and Talbot, JJ)
Court of Appeals No. 294840
Ottawa County Circuit Court No. 2009-033445-FH

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

Craig W. Haehnel (P32480)
Haehnel & Phelan
200 North Division Avenue
Grand Rapids, MI 49503
Phone: (616) 454-3834
Fax: (616) 459-4909
E. Mail: chaehnel.hp@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to MCR 7.301(A)(2). The Appellant filed a timely Application for Leave to Appeal. On December 29, 2010, this Court granted the Application and directed the Appellant to brief three specific issues. (Appx. 91a)

STATEMENT OF QUESTIONS INVOLVED

I. WHETHER A PERSON PRESENT IN HIS OR HER OWN HOME CAN LAWFULLY RESIST A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE HOME WITHOUT VIOLATING MCL 750.81d?

The Appellant answers this question "yes."

The Appellee answers this question "no."

The Court of Appeals answered this question "no."

The Circuit Court answered this question "no."

II. IF NOT, WHETHER, SO INTERPRETED MCL 750.81d IS UNCONSTITUTIONAL?

The Appellant answers this question "yes."

The Appellee answers this question "no."

The Court of Appeals answered this question "no."

The Circuit Court answered this question "no."

III. WHETHER A DEFENDANT PROSECUTED UNDER MCL 750.81d FOR RESISTING A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE DEFENDANT'S HOME MAY CLAIM SELF DEFENSE?

The Appellant answers this question "yes."

The Appellee's answer is unclear

The Court of Appeals answered this question "no."

The Circuit Court answered this question "yes."

OVERVIEW OF THE CASE

The Appellant was charged with obstructing and resisting a police officer, MCL 750.81(d)(1) and obstructing a police officer causing injury (MCL 750.81(d)(2). The charges arose out a police entry into the Appellant's home after he refused a request for a consent to search. The defendant was in the process of closing the door when the officers forcibly entered the home, leading to the altercation which ended outside of the home.

The Appellant filed a Motion to Quash, contending that the entry was illegal and that despite *People v. Ventura*, 262 Mich App 370, 686 N.W.2d 748 (2004), he was entitled to resist that illegal entry because he was in his own home when the resistance took place.

The Circuit Court denied the Motion but stayed proceedings so that the Appellant could seek interlocutory review from the Michigan Court of Appeals. The Court of Appeals granted the Application for Interlocutory Review and agreed to hear the case on its merits. The Appellant made both statutory and constitutional arguments in favor of his position that he had a right to resist. On June 10, 2010, the Court of Appeals, in an unpublished opinion, affirmed the lower court. A timely motion for reconsideration was denied on August 5, 2010.

The Appellant filed a timely Application for Leave to Appeal in this Court. On December 29, 2010, this Court granted that Application and directed the Appellant to brief three specific issues, as set forth *supra* and in its Order.

CONCISE STATEMENT OF FACTS

The Appellant had filed a Motion to Quash the Bind-Over. (Appx. 3a) Thus, the factual basis for this appeal is found in the Preliminary Examination transcript. (Appx 9a). The

Preliminary Examination was held in the 58th District Court for the County of Ottawa on January 21, 2009 (Hon. Bradley S. Knoll presiding). (Appx. 9a)

Officer Hamberg testified that he had been told that Officer DeWys that there may be a person within the Appellant's home (not the Appellant) who might have an outstanding warrant. (Appx 13a). When Officer Hamberg arrived at the scene, he made contact with an individual in the driveway who told the officer that there were a number of people under the age of 21 inside of the house who were drinking. (Appx 13a). It was approximately 4AM. (Appx. 13a).

Officer Hamberg testified that he was able to see inside of the house and that he was not able to see any drugs, marijuana or alcohol. (Appx 18a and 25a). The witness told a woman named Ms. McCarry that the police were going to secure the home. (Appx 19a). This statement was made after consent to search had been refused. (Appx 19a). The Appellant then appeared and told the officer to leave. (Appx 19a). The officer declined, again explaining that he intended to secure the home. (Appx 19a). The Appellant yelled that this was his house and he tried to slam the door. (Appx 19a). The witness reacted by putting his shoulder into the door, entering the Appellant's home. (Appx 19a). The witness then testified that "we began a physical struggle back and forth." (Appx 19a). The witness recalled that the Appellant and he grabbed each other and "we kind of wrestled around in the entryway door." (Appx 20a-21a). Officer DeWys then joined the fray. (Appx 21a). There was physical fighting, and the Appellant continued to struggle until the witness told Officer DeWys to taser him. (Appx 21a).

The confrontation was described as "fairly violent." (Appx 21a).

The witness admitted that he did not have a search warrant. (Appx 25a-26a). The witness also admitted that the Appellant was in his own residence when he tried to close the door. (Appx

26a-27a). The witness agreed that the Appellant was resisting the officer's attempt to come into his home. (Appx 27a).

The witness admitted that his purpose was to enter the home and look for evidence (even though he would have not had a warrant at the time). (Appx 27a). A search warrant was eventually obtained. (Appx 27a).

Officer DeWys testified that the Appellant stated that the police were not coming into his home. (Appx, 38a). The Appellant then tried to shut the door, and the physical altercation ensued. (Appx 37-39a). Officer Hamberg initiated the physical confrontation by putting his shoulder into the door. (Appx 39a). Officer DeWys also thought that his actions were justified so that evidence could be secured. (Appx 44a). The Appellant was in his home when the altercation began. (Appx 47a).

The Appellant filed a Motion to Quash. (Appx 3a) The trial court denied that motion on the grounds that any privilege to resist a forcible entry by the police was waived when an altercation resulted. (Appx 66a-77a) The Appellant filed a Motion to Reconsider. (Appx 3a) The trial court denied that motion but did agree to give a jury instruction on self defense if the evidence introduced at trial warranted such an instruction. (Appx 78a-80a).

The Appellant filed an interlocutory Application with the Michigan Court of Appeals. (Appx 81a). The lower court proceedings were stayed so that the appeal could be taken. (Appx 3a) Leave was granted, and the case was briefed and argued on its merits. On June 10, 2010, the Court of Appeals affirmed the trial court in an unpublished, per curiam decision. (Appx 82a-89a) *People v. Moreno*, 2010 WL 2332381 (COA 2010). The components of the decision were:

A. The Court's analysis began with *People v. Corr.* 287 Mich App 499, 788.N.W.2d 860

(2010). In *Corr*, a vehicle in which the defendant was a passenger was stopped for suspected drunk driving. The defendant's son was driving, and he was arrested for intoxicated driving. After the arrest, the police remained on the scene. The defendant was ordered to remain in the vehicle. She ignored the command and got out of the vehicle. She pushed several of the officers. As a result, she was arrested and charged with a violation of MCL 750.81d.

The Court of Appeals held that the evidence was sufficient to bind the defendant over. The Court identified the elements of the offense as "(1) the defendant assaulted, battered wounded resisted, obstructed, opposed, or endangered a police officer; and (2) the defendant knew or had reason to know that the person the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his duties." *Ventura* was cited for its holding that the lawfulness of the police officer's actions was not an element of the offense. In the Court of Appeals view, all that is required is that the officer is performing his or her official duties at the time of the incident. Any interference with the officer is deemed a criminal act;

B. In *Moreno*, the Court of Appeals stated that the defendant "not only attempted to close the door of the home, following the officers' verbal indication they intended to enter the premises to preclude the destruction of evidence pending receipt of a search warrant, but also engaged in a physical altercation with the officers." Slip. Op at 4. (Appx 85a).

The Court of Appeals concluded that this type of conduct was prohibited by MCL 750.81d because of the defendant's actions and because the record showed that the defendant knew or should have known that the individuals were police officers (Appx 85a-86a);

C. As to the Appellant's argument that the warrantless entry to his home should "provide

an exception or serve to negate the applicability of the statute, the Court of Appeals cited *People v. Snider*, 239 Mich App 393, 608 N.W.2d 502 (2000). Slip Op at 5. (Appx 86a).

Snider involved the exigent circumstances exception to the warrant rule. The Court of Appeals opined that a desire to avoid the destruction of evidence was an exigent circumstance and that, as a result, the police had the right to enter the defendant's home without a warrant. (Appx 87a).

The Court of Appeals also opined that its holding in *Ventura* precluded consideration of the legality of the officers' conduct when deciding whether there was a violation of MCL 750.81d. Slip Op at 6. (Appx 87a).;

D. Because of *Ventura*, the Court of Appeals held that the Appellant could neither assert self-defense or receive a self defense instruction. Slip Op at 7. (Appx 88a); and

E. MCL 750.81d provided sufficient notice that defense of one's home was prohibited even if the police officers were acting illegally. (Appx 89a).

The Appellant then filed a timely Motion for Reconsideration which was denied on August 5, 2010. (Appx 90a).

ARGUMENT

I. A PERSON WHO IS PRESENT IN HIS OR HER HOME CAN LAWFULLY RESIST A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE HOME, WITHOUT VIOLATING MCL 750.81d.

Preservation: The issue is fully preserved because the *Ventura* decision was the authority for the decisions made in the lower courts.

Standard of Review: Matters of statutory interpretation are reviewed de novo. *E.g., Goldstone v. Bloomfield Twp Pub. Library*, 479 Mich 554, 558, 737 N.W.2d 476 (2007); *Phillips*

v. Mirac, Inc, 470 Mich 415, 422, 685 N.W.2d 174 (2004).

Legal Principles: Statutory Construction. The primary goal of statutory construction is to give effect to the Legislature's intent. *E.g. People v. Osantowski*, 481 Mich 103, 107, 748 N.W.2d 799 (2008). The statute's words are the most reliable indicator or the Legislator's intent and should be interpreted based on their ordinary meaning and the context within which they are used in the statute. *E.g. People v. Lowe*, 484 Mich 718, 721-722, 773 N.W.2d 1 (2009). An unambiguous statute is enforced as written. *E.g., People v. Holder*, 483 Mich 168, 172, 767 N.W.2d 423 (2009). It is only when statutory language is ambiguous that a court may look outside of the statute to ascertain legislative intent. *Id.* A statutory provision is ambiguous if it irreconcilably conflicts with another provision or is equally susceptible to more than one meaning. *E.g., People v. Gardner*, 482 Mich 41, 50, 753 N.W.2d 78 (2008).

Statutes that address the same subject or share a common purpose are in pari materia and must be read together as a whole *e.g., People v. Harper*, 479 Mich 599, 621, 739 N.W.2d 523 (2007). No one provision may be viewed in a vacuum. *E.g., Jansson v. Dept of Corrections*, 147 Mich App 774, 777, 383 N.W.2d 152 (1985). "The object of the in pari materia rule is to give effect to the legislative purpose as found in harmonious statutes." *E.g, People v. Webb*, 458 Mich 265, 274, 580 N.W.2d 884 (1998).

Discussion: Prior to *Ventura*, the law in Michigan was that a person could resist an illegal arrest or other intrusion by the police. *E.g., People v. Krum*, 374 Mich 356, 361, 132 N.W.2d 69 (1965). One of the elements of the resisting arrest statute was that the arrest was lawful. *E.g., People v. MacLeod*, 254 Mich App 222, 656 N.W.2d 844 (2002).

As the cases make clear, this was a doctrine firmly rooted in the common law.

When the Legislature enacted MCL 750.81d, the reference to "lawful command" was not included in subsection 1 of the statute. Rather, the statutory language refers to an officer who is performing his duties.

In *People v. Ventura*, 262 Mich App 370, 686 N.W.2d 748 (2004), the Court of Appeals interpreted the statute to mean that a person could no longer resist an illegal arrest or intrusion by the police. This decision was reached even though there was nothing in the statute itself which indicated that the Legislature intended to abrogate a long-standing common law principle.

This decision has had an enormous practical impact in Michigan. For example, it is counsel's experience that all resisting charges are now based on section 81d rather than section 479. It is counsel's opinion that this trend is based on *Ventura* and the fact that the prosecutor does not have to deal with illegal conduct on the part of the police. A related issue is that *Ventura* has given the police great additional power at the expense of Michigan residents who, after *Ventura*, must stand idly by even though the police are acting illegally.

Another related issue is that the Court of Appeals made what should have been a legislative decision. This assertion is justified because the Court of Appeals justified its interpretation of the statute on the grounds that the statute "now serves as another mechanism to reduce the likelihood and magnitude of the potential dangers inherent in an arrest situation, thus dually protecting both the general public and its police officers." 262 Mich at 377. It is the Appellant's position that a decision to abrogate years of common law to the contrary belongs to the Legislature and not to the Courts.

The Appellant respectfully submits that there are at least four reasons for concluding that *Ventura* was wrongly decided:

A. In *People v. Dupree*, 468 Mich 693, 788 N.W.2d 399 (2010), this Court decided that the affirmative defense of self-defense applied to a person charged with being a felon in possession of a firearm. In reaching this result, this Court conducted a review of firmly-embedded principles of common law. This Court opined that the Legislature is aware of such principles when it enacts statutes and that the failure of the Legislature to specifically address an issue should not be deemed to abrogate long-standing principles of common law.

The Appellant submits that *Ventura* is directly contrary to *Dupree's* analysis. Specifically, the Court of Appeals abrogated long-standing principles of common law without a specific signal from the Legislature that the Legislature had any such intent. The Appellant submits that, as a result, the Court of Appeals' interpretation of section 81d is wrong and that *Ventura* should be overruled.

Only this Court can accomplish that result. As indicated by this case, the Court of Appeals itself is standing staunchly in support of *Ventura* and *Ventura* will likely remain law unless this Court acts;

B. The Court of Appeals ignored a contrary signal from the legislature. Specifically, MCL 750.479(8) defined "obstruction" (of an officer performing his or her duties) in terms of resisting a lawful command. That exact definition was carried over into MCL 750.81d(7)(a). Nothing in *Ventura* explains the inconsistency between the Court of Appeals' interpretation and the continued definition of obstruction in terms of a lawful command. The Appellant submits that the inconsistency cannot be explained, and that, as a result, *Ventura* was wrongly decided. Specifically, *Ventura* did not consider the language of section 81d(7)(a) and did not consider whether there was any support for the notion that a person can be convicted under section 81d (1)

or (2) even though that person can obstruct an unlawful command on the part of the police. It is the Appellant's position the language in subsection (7)(a) completely undercuts the Court of Appeals' speculation about the reason for the apparently omitted language elsewhere in the statute. In this regard, the Appellant has located nothing in the legislative history of section 81d that indicates that the Legislature intended to overrule years of common law;

C. By contrast, the Self Defense Act, MCL 780.971 et seq illustrates the Legislature's awareness of how to legislate when a long-standing principle of common law is being abrogated. Specifically, the SDA changes the common law on the duty to retreat and makes Michigan a "stand your ground" state. MCL 780.972 authorizes a person to defend himself or herself without retreating as long as the pre-conditions set forth in the statute are met. MCL 780.973 and 974 make it clear that the SDA is not abrogating other aspects of common-law self defense.

It is the Appellant's position that if the Legislature intended MCL 750.81d to abrogate long-standing common law principles, it would have done so specifically as opposed to what the Court of Appeals found to be an abrogation by omission.

In this regard, a respected commentator has taken the position that the SDA represents the first-time in Michigan history that the Legislature has abrogated any part of common-law self-defense. *Gillespie, Michigan Criminal Law and Procedure*, Sect. 91.57 (2010). The commentator's position is directly contrary to the position taken by the Court of Appeals in *Ventura;* and

D. It is hornbook law that the judiciary should not usurp the authority of the Legislature when making judicial decisions. *E.g., Rowland v. Washtenaw County Road Comm'n*, 477 Mich 197, 222, 731 N.W.2d 41 (2007) (overruling prior cases and opining that overruling a decision

which usurps the Legislature's authority "restores legitimacy to the law.")

In the instant case, the Appellant submits that the Court of Appeals usurped the Legislature by construing a statute to abrogate long-standing common-law principles based on the Court of Appeals' policy decision that its interpretation would make it less dangerous for the police to make arrests. It is the Appellant's position that such a policy judgment is for the Legislature to make. The Legislature is free to make such a judgment, but the simple omission of language does not support the assertion that the Legislature had made such a judgment when it enacted MCL 750.81d. This is particularly true when MCL 750.81d is compared to the SDA. When the Legislature intended to make a policy statement that deviated from common law, it made that deviation clear. The Legislature made no such statement when it enacted MCL 750.81d.

For all of these reasons, it is the Appellant's position that *Ventura* was wrongly decided and that it should be overruled. It is the Appellant's further position that a person in their own home can lawfully resist the unlawful actions of the police without committing a crime.

II. IF THE COURT OF APPEALS CORRECTLY INTERPRETED THE STATUTE, IS MCL 750.81d AS SO INTERPRETED UNCONSTITUTIONAL {U.S. Const. Am IV and V; 1963 Const. Art. 1, Sects. 11 and 17}

Preservation: This issue is fully preserved because it was presented to both the trial court and the Court of Appeals.

Standard of Review: Constitutional questions are reviewed de novo.. *E.g.,People v. Hrlic*, 277 Mich App 260, 262, 744 N.W.2d 221 (2007)

Legal Principles: Sanctity of the Home. It is well accepted that a person's home is the location that receives the highest level of constitutional protection. *E.g., Steagald v. United*

States 451 U.S. 204 (1981),; *Payton v. New York*, 445 U.S. 573 (1980). *Payton* involved two consolidated cases. In *Payton*, the defendant was suspected in a homicide. Six police officers went to Payton's apartment. Although music could be heard, there was no answer to the officers' knocks. The officers eventually broke into the apartment. Payton wasn't there, but incriminating evidence was seized. In *Riddick*, the defendant was suspected in two armed robberies. Police went to Riddick's home and knocked on the door. The door was opened by Riddick's young son. The officers could observe that Riddick was at home. The police entered the house and arrested Riddick. In neither case did the police have a warrant.

The United States Supreme Court ruled that the police had violated the defendants' Fourth Amendment rights. The core of the Fourth Amendment's protection is the right to be secure in one's home. The Fourth Amendment shields citizens from invasions into the privacy of their home. As the Court put it, ""that at the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." 445 U.S. at 589-590.

A state statute cannot trump this very basic protection. The Supreme Court also ruled that there were no exigent circumstances. If exigent circumstances exist, they must be accompanied by probable cause before a warrantless entry is constitutionally justified. The police had more than adequate time to obtain a warrant if they could justify the warrant application to a judicial officer.

In *Steagald*, the issue was whether a law enforcement officer could legally search for the subject of an arrest warrant in the home of a third party without first obtaining a search warrant. Specifically, the DEA was looking for a federal fugitive and received information that he could

be found at a particular phone number in Atlanta, Georgia during the next 24 hours. A local agent determined the location of the phone number and a number of agents went to that location to execute the arrest warrant. The agents detained two men who were standing outside of the residence (one of whom was the defendant) while determining that neither was the fugitive being sought. The agents knocked on the door of the residence. A woman answered the door and told the agents that she was alone. The woman was detained while another agent searched the residence. The fugitive was not located, but the agent did find cocaine and other incriminating evidence. A search warrant was obtained and 43 pounds of cocaine was discovered.

The defendant was federally charged. He moved to suppress the initial warrantless entry into the home. The response was that the arrest warrant justified the entry. The motion was denied. The defendant was convicted and the denial of the suppression motion was affirmed on appeal.

The Supreme Court reasoned that the warrantless search had taken place without consent or exigent circumstances. The arrest warrant was insufficient to justify the search of the residence without a search warrant. The Court stated that "[i]n the absence of exigent circumstances we have consistently held that such judicially untested determinations (of probable cause) are not reliable enough to justify an entry into a person's home to arrest him without a warrant, or a search of a home for objects in the absence of a search warrant." 451 U.S. at 213. These constitutional considerations protect the specific right "of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government is weighty. Thus, in order to render the instant search reasonable under the Fourth Amendment, a search warrant is required." 451 U.S. at 222.

The United States Supreme Court recently re-affirmed these principles in *Kirk v. Louisiana*, 536 U.S. 635 (2002). In *Kirk*, police officers observed the defendant's apartment based on a citizen's complaint that drugs were being sold from the apartment. The officers observed people entering and exiting the apartment.

The police officers entered the defendant's home. The defendant was arrested and searched. At the time of entry, the officers had no arrest or search warrant. A warrant was obtained later. The state courts upheld the search on the grounds that the officers had probable cause to arrest the defendant.

The United States Supreme Court reversed. *Payton* was cited for the proposition that "absent exigent circumstances, the firm line at the entrance to the house...may not be crossed without a warrant." 536 U.S. at 636. "*Payton* makes plain that officers need either a warrant or probable cause plus exigent circumstances in order to make lawful entry into a home." 536 U.S. at 638.

In *Wright v. Georgia*, 373 U.S. 284 (1963), a group of young men playing basketball in a public park were ordered to leave by a police officer. When the men did not obey, they were arrested, charged, and convicted. When addressing whether the men could be prosecuted for disobeying the officer's command, the Supreme Court stated "[o]bviously, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the constitution. In *Wright*, the constitutional provisions were the Equal Protection Clause and Due Process. The state statute could not trump the Constitution because the statute failed to give warning of the boundaries between constitutionally protected acts and acts which were

unprotected by the Constitution. The Supreme Court also couched the analysis in Due Process terms, i.e. a statute violates Due Process if the situations to which it applies or does not apply cannot be determined from the face of the statute. Here, the resisting (disorderly conduct) statute did not adequately inform the defendants that whether simply playing basketball in a municipal park was a violation of the statute if an officer told them to leave.

In *Bourgeois v. Strawn*, 501 F.Supp.2d 978 (E.D.Mich. 2007), the police had procured a warrant for the arrest of a man named Eichhorn. The police learned that Eichhorn might be staying at Bourgeois' home, and several armed police officers went to the scene to investigate. After some delay, Bourgeois came to the door of his home. Bourgeois acknowledged that Eichhorn was at his home. When Bourgeois went to another door in the home so that he could better communicate with the officers, he was confronted by three policeman who were pointing their weapons at him. The officers told Bourgeois to come out of his home and to get onto the ground. Bourgeois refused. Eichhorn eventually surrendered, but Bourgeois was charged with resisting and opposing in violation of MCL 750.81d.

During the civil litigation, the defendant police officer took the position that the order directed at Bourgeois was lawful. Alternatively, even if the order was unlawful, the police officer argued that Bourgeois had the obligation to obey it. This position required the Court to undertake a constitutional analysis because a police officer is not entitled to immunity if his actions violate the constitution.

The Court disagreed with the officer's argument and stated that "[t]he Court does not believe that the evidence supports a finding that [Bourgeois] resisted or obstructed a police officer in the performance of his duties," in violation of MCL 750.81d. 501 F.Supp.2d at 987.

The Court cited *Ventura* for the proposition that a defendant violates MCL 750.81d even if the order given by the officer is not lawful. "In other words, a person in Michigan may not resist an unlawful order." 501 F.Supp.2d at 987. Despite acknowledging *Ventura* and its interpretation of the statute, the Court concluded that the constitution trumped the statute (consistent with *Wright)* and that the officer's unconstitutional conduct meant that Bourgeois had not violated MCL 750.81d. The Court's specific reasoning is instructive.

> That argument, that **police can manufacture grounds to arrest a person innocent of wrongdoing by telling him to leave his own home without any lawful authority to do so and then arresting him for violating that directive is a disturbing proposition.** (Emphasis added).
>
> The Court does not read the Michigan intermediate appellate court's decision in *Ventura* as sanctioning that argument, and **the proposition is of questionable constitutional validity.** (Emphasis added) The ancient traditions of our jurisprudence declare that "the house of every one is to him as his castle and fortress," and one's home is safe harbor for the homemaker, family and his proper goods. (Citing authority).
>
> Certainly, the police could not have entered the home of the plaintiff and removed him without proper judicial authority. *See, Groh v. Ramirez*, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (holding that "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion stands at the very core of the Fourth Amendment")(internal quotes and citations omitted); *Payton v. New York*, 445 U.S. 573, 585 (1980) (declaring that the "physical entry of the home is chief evil against which the wording of the Fourth Amendment is directed")...
>
> **As a matter of law, therefore, [Bourgeois] could not have violated the statute by refusing to come out of his home.** 501 F.Supp.2d at 987-988. (Emphasis added)

In *Daugherty v. Dickey*, 2009 WL 2849118 (E.D.Mich. 2009), officers were dispatched to investigate a report that people were fighting. Daugherty was in her home, and the officer was in the backyard of that home. Daughtery's son was suspected of being a participant in the fight. The son was also in the home. When the son would not come out of the house, the officer

entered the house from the back with his firearm and his taser drawn. Daughtery was tasered three times, handcuffed, arrested, and charged with MCL 750.81d. The issue in the civil litigation was whether the officer was entitled to immunity. Immunity in turn depended on whether the officer's conduct violated the constitution. The Court concluded that the Michigan statute does not authorize the police to violate the constitution. Indeed, the constitution puts an affirmative duty on the police to recognize the sanctity of the home.

In *People v. Riddle,* 467 Mich 116, 649 N.W.2d 20 (2002), this Court considered the castle doctrine and the sanctity of a person's home. The defendant was convicted of felony firearm and second-degree murder. The issue was duty to retreat. This Court stated that "regardless of circumstances, one who is attacked in his dwelling is *never* required to retreat where it is otherwise necessary to exercise deadly force in self-defense. When a person is in his "castle" there is no safer place to retreat; the obligation to retreat that would otherwise exist in such circumstances is no longer present, and the homicide will be deemed justifiable. This true where one is a voluntary participant in mutual combat." 467 Mich at 120-121, citing *Pond v. People*, 8 Mich 150, 176 (1860) for the mutual combat principle. Numerous other jurisdictions have held that the castle doctrine in the home means that a person can safely retreat into their home and defend themselves (including use of deadly force) if attacked. *E.g., State v. Grantham*, 224 S.C. 41, 66 S.E.2d 291 (1953); *State v. Phillips*, 38 Del. 24, 187 A. 721 (1936); *People v. Tomlins*, 213 N.Y. 240, 107 N.E. 496 (1914); *Davis v. State*, 48 Ala. App. 58, 261 So.2d 783 (1972); *State v. Browning*, 28 N.C. App. 376, 221 S.E.2d 375 (1976); *Gainer v. State*, 40 Md.App. 382, 391 A.2d 856 (1978); *State v. Jacoby*, 260 N.W.2d 828 (Iowa 1977). *See, also, People v. Lenkevich*, 394 Mich 117, 229 N.W.2d 298 (1975).

Discussion: At the threshold, the Court of Appeals opined that the exigent circumstances exception justified the warrantless entry into the Appellant's home. The Court of Appeals did not identify any emergency, but merely opined that a desire to preserve evidence was always an exigent circumstance.

At the threshold, the Court of Appeals holding was specifically rejected by the United States Supreme Court in *Welsh v. Wisconsin*, 466 U.S. 740 (1984). In *Welsh,* a motorist observed another vehicle traveling erratically. The vehicle eventually ended up in the middle of an open field. No one was hurt and no property had been damaged. The motorist approached the driver of the vehicle who asked the motorist for a ride home. The motorist had already reported his observations to the police. When the motorist would not agree to a ride, the defendant walked away from the scene.

The police arrived and ran the license plates. The defendant's name came up. His address was only a short distance from the scene. The police made no effort to get a warrant. Rather, they went to the petitioner's home. They knocked on the door which was answered by the defendant's step daughter. The police entered the home and went upstairs to the defendant's bedroom. The police found the defendant lying naked in bed. The defendant was arrested and taken to the police station.

A criminal complaint was filed against the defendant for driving while intoxicated. At the time of the incident, this was a misdemeanor charge which was non-jailable. The Wisconsin Supreme Court ultimately upheld the warrantless entry into the defendant's home on three grounds: 1) hot pursuit; 2) the need to protect the public; and 3) the need to protect the destruction of evidence (in this case, the defendant's blood alcohol level which would diminish

over time).

The United States Supreme Court easily rejected the first two. There was no hot pursuit of the defendant and the defendant was sleeping in bed meaning that the public was not at risk.

As to exigent circumstances, the Court focused on the relatively minor nature of the underlying offense. The Court also focused on its long-standing principle that the "exceptions to the warrant requirement are few in number and carefully delineated. 466 U.S. at 749. "The police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests." 466 U.S. at 749-750.

As to the minor nature of the underlying offense, the Court stated that "[w]hen the government's interest is only to arrest for a minor offense, that presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate." 466 U.S. at 750. [A] home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense, such as the kind in this case, has been committed." 466 U.S. at 753. "Given this expression of the State's interest (classifying the offense as a misdemeanor) a warrantless home arrest cannot be upheld because evidence of the petitioner's blood-alcohol level might have dissipated while the police obtain a warrant." 466 U.S. at 754.

Here the underlying offense being investigated (underage drinking) was also a minor offense. For the same reasons used by the United States Supreme Court in *Welsh*, concerns over the destruction of evidence while the police were attempting to obtain a warrant do not amount to an exigent circumstance. The Court of Appeals holding is simply and directly contrary to a holding by the United States Supreme Court.

The Appellant submits that there are other reasons to reject the Court of Appeals' analysis. To invoke the exception, the police must act reasonably and have probable cause. *E.g., In re Forfeiture of $176,598*, 443 Mich 261, 266, 505 N.W.2d 201 (1993). The police must establish the existence of an actual emergency on the basis of specific and objective facts indicating that immediate action was necessary. *Id*, 443 Mich at 271; *People v. Cartwright*, 454 Mich 559, 563 N.W.2d 208 (1997).

The case cited by the Court of Appeals illustrates what constitutes an emergency. In *People v. Snider*, the police were told that the defendant had just committed two murders. The police went to the door of the defendant's hotel room and knocked on the door. There was no answer. The police entered the room and found it empty. The police then left and obtained a warrant. Exigent circumstances existed because of the seriousness of the crime and the danger that the defendant might pose to himself or others, i.e. he was an armed and accused murderer on the run.

By contrast, in the instant case, the Court of Appeals did not identify any emergency. The record supports the assertion that there was no emergency. The police's actions were in response to a refusal to grant consent. The police had no reason to believe that evidence existed or that if it did exist, it would be destroyed unless there was immediate intervention by the police. The Appellant submits that a desire to continue an investigation by forcibly entering a person's home is neither reasonable nor based on probable cause.

The police were free to secure the perimeter and seek a warrant. They did not do so.

The Appellant also submits that the limitation on the exigent circumstances exception are

designed to prevent the exception from swallowing the Fourth Amendment and, in this case, the castle doctrine. Police can always claim that they are seeking evidence which might be destroyed if there is a delay. If a bare-bones claim was sufficient, no person's home would be safe from search.

If this Court agrees, then the issue becomes whether the Court of Appeals' interpretation of section 81d trumps the constitution. It is the Appellant's position (as supported by the cases cited *supra*) that the answer to this question is "no." In this regard, it is axiomatic that if there are multiple interpretations of a statute, a Court should select the interpretation that preserves the constitutionality of the statute. *E.g., Caterpillar Inc v. Dept. of Treasury*, 440 Mich 400, 413, 488 N.W.2d 182 (1992). It is the Appellant's position that the Court of Appeals violated that principle by holding (despite overwhelming constitutional authority to the contrary) that section 81d prohibits a person from protecting their own home from illegal entry by the police.

In addition, it is also axiomatic that if there is a conflict between the constitution and a statute, the constitution prevails. In the instant case, the castle doctrine conflicts with the Court of Appeals holding that a person cannot resist an illegal entry to his or her own home. It is the Appellant's position that the castle doctrine and the constitutional rules regarding the sanctity of the home prevails.

There are two other constitutional protections that are implicated by the facts of this case.

In *Wright v. Georgia,* 373 U.S. 284 (1963), a group of young men were playing baseball in a public park. A police officer ordered them to leave the park. When they did not obey, they were arrested for disobeying the officer's command. The United States Supreme Court framed the issue in Due Process terms:

> If petitioners were held guilty of violating the Georgia statute because they disobeyed the officers, this case falls within the rule that a generally worded statute which is construed to punish conduct which cannot constitutionally be punished in unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute.

373 U.S.at 292

Similarly, in the instant case, section 81d is a generally-worded statute. The Appellant submits that no reasonable person would have known that he or she could be charged with a crime under section 81d because he or she defended his or her home from aggressive police officers who are forcibly entering the home without a warrant.

The Court of Appeals brushed this argument off by holding (without discussion) that section 81d gave adequate notice of its scope. For the reasons stated in *Wright*, the Appellant strongly disagrees. Just as the young men believed that they had a right to be in a public park, the Appellant believed that he could refuse consent to search his own home.

Excessive force is a third constitutional issue for this Court's consideration.

In *Graham v. Conner*, 490 U.S. 386 (1989), Graham was a diabetic. He experienced an insulin reaction and asked a friend to drive him to a store to purchase some orange juice. The store was crowded, and Graham hastily exited the store. He asked his friend to drive him to another location. A police officer became suspicious and stopped the vehicle occupied by Graham and his friend. The officer ordered the two men to wait while he investigated what might have happened at the store. Other officers arrived on the scene. Graham was handcuffed. The other officers ignored his explanations or his request for treatment. Graham sustained injuries before he was released after the first officer determined that his suspicions were

unfounded.

The issue before the Supreme Court was what standard should be used to analyze a claim of excessive force. The Court concluded that when an arrest, search, or seizure of an individual is involved, the appropriate standard is "objective reasonableness."

The analysis begins with identifying the constitutional right allegedly infringed by the challenged application of force. If the 4th Amendment is implicated, then the jurisprudence related to that Amendment must be considered.

The next step is to balance the nature of the intrusion against the governmental interests at stake. The governmental interests at stake include a consideration of the "severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the offices or others, or whether he is actively resisting arrest or attempting to evade arrest by flight." 490 U.S. at p. 396. The reasonableness of the force is judged using the "perspective of a reasonable officer on the scene." *Id.* Reasonableness is also judged using an objective standard. Thus, the good intentions of the police do not excuse an excessive use of force.

It is the Appellant's position that the 4th Amendment was implicated by the police's conduct and that the forced used by the police was excessive. Specifically: 1) The crime being investigated (use of alcohol by a minor) was not a serious crime; 2) The Appellant imposed no risk to the safety of the officers or others. He would have stayed within his home but for the aggressive actions of the officer; 3) The Appellant was not actively resisting the officer because he had a constitutional right to close the door to his home; 4) The Appellant was not actively fleeing because he was in his own home; and 5) The level of force was unreasonable given the facts faced by the officer. A violent confrontation was provoked by the officer's unconstitutional

act of forcing himself into the Appellant's home without a warrant. As *Graham* makes clear, the standard is objective reasonableness not what the officer's subjective beliefs might have been. Initiating a violent controversy is not objectively reasonable.

For all of these reasons, it is the Appellant's position that important constitutional questions are implicated by his case and that section MCL 750.81d (as interpreted by *Ventura)* would be unconstitutional in the context of an illegal and warrantless entry into a person's home by the police.

III. A DEFENDANT PROSECUTED UNDER MCL 750.81d FOR RESISTING A POLICE OFFICER WHO UNLAWFULLY AND FORCIBLY ENTERS THE DEFENDANT'S HOME MAY CLAIM SELF-DEFENSE.

Preservation: The question is preserved because it was presented to both the trial court and to the Court of Appeals.

Standard of Review. Legal questions are reviewed de novo.. *E.g.,People v. Hrlic*, 277 Mich App 260, 262, 744 N.W.2d 221 (2007)

Legal Principles: Common Law Self Defense: This subject was recently addressed by this Court in *People v. Dupree*, 486 Mich 693, 788 N.W.2d 399 (2010). In *Dupree*, the defendant was convicted of being a felon in possession of a firearm. The issue was whether the common-law defense of self defense was available to the defendant. This Court held that it was and that a new trial was required because of instructional error. The components of this Court's reasoning were:

A. The felon in possession statute does not address the common law affirmative defense of self-defense;

B. The Legislature's failure to provide explicitly for a common law defense does not

foreclose a defendant from asserting such a defense (if warranted by the facts);

C. Courts assume that when the Legislature enacts a statute, it is mindful of "firmly embedded" common law;

D. Absent a clear indication that the Legislature intended to abrogate the common law defense, such a defense remains available;

E. Professor LaFave was quoted for the proposition that "[i[t is only just that one who is unlawfully attacked by another, and who has no opportunity to resort to the law for his defense, should be able to take reasonable steps to defend himself from physical harm. When the steps he takes are reasonable, he has a complete defense to such crimes against a person as murder and manslaughter, attempted murder, assault and battery, and the aggravated forms of assault and battery." Slip Op at 6;

F. The Self-Defense Act did not apply to Dupree case because it was enacted after the incident occurred;

G. There was evidence in the record that supported the common-law defense; and

H. Once interposed, the prosecutor bears the burden of disproving the common-law defense beyond a reasonable doubt.

Self-Defense Act. The Self-Defense Act ("SDA") became effective on October 1, 2006. MCL 780.971 through 780.974. This statute alters at least some of the common-law principles regarding self-defense. The primary change in the statute focuses on the duty to retreat. Michigan has now become a "stand your ground" state by eliminating the duty to retreat under certain specific circumstances. MCL 780.972 (2) states:

An individual who has not or is not engaged in the commission of a crime when

> he uses force other than deadly force may use force anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of force is necessary to defend himself or herself or another individual **from the imminent unlawful use of force by another individual.** (Emphasis added).

Subsection (1) deals with the use of deadly force and is thus not applicable to the instant case.

MCL 780.973 specifically states that the common law of self-defense is not modified other than as set forth in MCL 780.972. MCL 780.974 states:

> This act does not diminish an individual's right to use deadly force or force other than deadly force in self-defense or defense of another individual as provided by the common law of this state in existence on October 1, 2006.

Discussion: The record is clear that there is evidence to support the common-law affirmative defense of self-defense. The Appellant was in his own home. He exercised his right to refuse consent to search. He then attempted to close his front door. In response, an officer put his shoulder into the front door, forced his way into the home, and initiated a violent confrontation. Because the Appellant could invoke the right of self defense, the prosecutor would have to disprove self-defense beyond a reasonable doubt. Using traditional common law principles, the Appellant would be entitled to a jury instruction about self-defense. *E.g.* CJI2d 7.20.

The Court of Appeals ruled that the Appellant could neither invoke self defense nor receive an instruction. This ruling was based on *Ventura* and on the notion that the Appellant had no right to defend himself against illegal police conduct.

As held in both *People v. Riddle* 467 Mich 116, 649 N.W.2d 20 (2002) and *People v. Dupree,* 486 Mich 693, 788 N.W.2d 399 (2010), Michigan has long recognized the

common law right of self-defense. It is the Appellant's position that the Court of Appeals decision in his case is directly contrary to these two cases recently decided by this Court.

As discussed previously in this brief, the Court of Appeals has taken the position that self-defense does not apply to MCL 750.81d because a person no longer has the right to resist illegal conduct by the police. It is the Appellant's position that the Court of Appeals is wrong because the Legislature has not abrogated the common law of self-defense other than in the SDA where the abrogation is explicit. The Court of Appeals had no authority for the position that abrogation of decades of common law is accomplished by omission.

The SDA is another reason to conclude that the Appellant should be allowed to assert the affirmative defense of self defense and to receive a jury instruction on that subject. Contrary to the position taken by the Court of Appeals, the SDA specifically states that a person can stand his or her ground in response to unlawful use of force by another individual. Although the inconsistency between the SDA and the position taken by the Court of Appeals was argued, the Court of Appeals did not address the inconsistency in its opinion.

It is the Appellant's position that the statute controls and that *Ventura* cannot and did not override the SDA. At the threshold, the SDA became effective in 2006 some four years after the *Ventura* decision was made. In addition, the language and structure of the SDA supports the proposition that the Legislature had no intent of abrogating common law when it enacted MCL 750.81d.

It is also the Appellant's position that his facts fit within the framework of the SDA. The Appellant had committed no criminal act. He had a right to be in his home. He had a right to

refuse the officer's demand that he be allowed into the home. He had a right to close his door. He was faced with unlawful force when the officer put his shoulder into the front door and forced his way into the Appellant's home.

Since the officers' actions were unlawful, the Appellant has a statutory right to defend himself. The Court of Appeals' failure to address this issue or to explain why the SDA would not override its decision demonstrates that the decision was wrong.

The Appellant also submits that his interpretation of the SDA is reasonable and consistent with common law principles. The SDA does not contain any ambiguities regarding the unlawfulness of the actions taken by the police. The SDA specifically speaks in terms of the use of "unlawful force" by the aggressor. The reasoning of *Ventura* simply does not apply, and it is the Appellant's position that a person in their own home has the right to invoke the SDA when resisting the unlawful and forcible entry into his home–even if that entry is being made the police.

If this Court agrees, and if there is evidence in the record to support a self-defense instruction, the SDA would become the authority for such an instruction to be given.

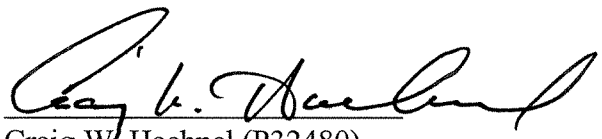
CONCLUSION

For all of the reasons stated, the Appellant is respectfully asking this Court: 1) to overrule *Ventura* and hold that a person in his or her own home can lawfully resist the police when they are unlawfully and forcibly entering the home; 2) alternatively, to conclude that MCL 750.81d, as interpreted by *Ventura*, is unconstitutional when the object of the police's action is a person's home; and 3) to conclude that a defendant who resists an officer's unlawful and forceful entry into his home can claim self defense.

If this Court agrees, the Appellant is respectfully asking that the lower courts' decisions be reversed and that the cause be remanded to the Ottawa County Circuit Court with instructions to dismiss the pending charges with prejudice.

Respectfully submitted,

Grand Rapids, MI
February 22, 2011



Craig W. Haehnel (P32480)
Haehnel & Phelan
200 North Division Avenue
Grand Rapids, MI 49503
(616) 454-3834

Exhibit
People v. Moreno
Case No. 141837

Daughtery v. Dickey, 2009 WL 2849118 (E.D. Mich 2009)

Slip Copy, 2009 WL 2849118 (E.D.Mich.)

Motions, Pleadings and Filings
Judges and Attorneys
Only the Westlaw citation is currently available.

United States District Court,
E.D. Michigan,
Southern Division.
Leslie Lee DAUGHERTY, Plaintiff,
v.
Roseville Police Officer Matthew Brian DICKEY, and the City of Roseville, Defendants.

No. 08-CV-11287.
Aug. 31, 2009.

Thomas M. Loeb, Farmington Hills, MI, for Plaintiff.

Peter W. Peacock, Plunkett & Cooney, Mount Clemens, MI, for Defendants.

ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (# 22)

GEORGE CARAM STEEH, District Judge.

***1** Defendants Roseville Police Officer Matthew Dickey and the City of Roseville move for summary judgment of plaintiff Leslie Daugherty's 42 U.S.C. § 1983 claims that the defendants violated the Fourth and Fourteenth Amendments by unreasonably handcuffing Daugherty without probable cause, applying excessive force, and criminally prosecuting her without probable case. A hearing was held on August 27, 2009. For the reasons set forth below, defendants' motion will be GRANTED, IN PART, to the extent Daugherty alleges municipal liability against defendant Roseville. Defendants' motion will be DENIED, IN PART, to the extent Daugherty alleges Officer Dickey is liable for arresting her without probable cause, applying excessive force, and malicious prosecution.

I. Background

Daugherty filed a complaint on March 25, 2008 alleging she was tasered three times, handcuffed, and arrested by Officer Dickey during the evening of July 1, 2007 at her home in Roseville, Michigan. Daugherty alleges that Roseville Officers were dispatched to her home after a neighbor called and reported a fight in the street. While Officer Dickey allegedly took a position in the backyard of the home, Daugherty was instructed by another Officer to go inside and retrieve one of her sons, who was believed to be involved in the fight. Daugherty alleges that Officer Dickey entered the house from the back with his firearm and taser drawn, and falsely accused her of challenging him for standing in the backyard with his pistol drawn and telling him "I'll show you a fucking gun." Daugherty alleges Officer Dickey also falsely accused her of being enraged and charging at him with a set of keys raised above her head. Officer Dickey allegedly asked Daugherty after the first taser, "where is he at," and continued to taser her after she gave unsatisfactory answers. Daugherty alleges Officer Dickey caused her to be falsely charged with assaulting a police officer in violation of M.C.L. § 750.81 d(1), and falsely testified against her during a three-day criminal jury trial. Daugherty was acquitted of the charges on March 6, 2008.

Count I alleges Officer Dickey is liable under 42 U.S.C. § 1983 for violating the Fourth and Fourteenth Amendments by unreasonably handcuffing Daugherty without probable cause, applying excessive force by tasering her three times, and prosecuting her for assaulting a police officer without probable cause. Count II alleges City of Roseville is liable under § 1983 for a policy, custom, or practice of failing to train, supervise, and discipline, causing the alleged constitutional violations.

The record shows that Roseville Officers were dispatched to Daugherty's home at 26201 Compson

after receiving a complaint of loud music and profanity from neighbors across the street at 26220 Compson. Dispatch also received 911 calls of neighbors fighting in the street, and use of an unknown pipe-like weapon. Officer Andrea Olewnik first arrived at the scene, followed by Officer Dickey and Officer Scott Burley. The fight was reported to be between neighbor Stephen Smith, age 44, whose wife had called 911, and Daugherty's sons Darin Bailey, age 27, and Daniel Bailey, age 23. Daugherty arrived home very shortly after the Officers arrived. Neighbors reported to the Officers that the two brothers had run inside the house. Officer Dickey knew it had been reported that a pipe-type weapon had been used during the fight by one of the brothers, and took a position in the backyard while Officer Olewnik and Officer Burley remained in front talking with Daugherty and others. Daniel Bailey exited from the front of the home without a weapon, and the whereabouts of Darin Bailey remained unknown. Officer Burley instructed Daugherty to go inside the house and retrieve her son Darin. Officer Dickey, standing at the back of the house at the time, was not informed that Daugherty was entering the home through the front door.

II. Deposition Testimony and DVD

***2** The confrontation of Daugherty and Officer Dickey inside the home are the subject of this lawsuit. There were no eyewitnesses.

A. Officer Dickey

Officer Dickey testified that he took a position in the back of the house to "shrink the problem and contain it," believing that someone was in the home. Officer Dickey was unaware that Daugherty had entered the house. Standing seven or eight paces away from the house holding a .45 caliber handgun, Officer Dickey could see inside the home through a glass storm door. Officer Dickey testified that he saw Daugherty inside, and told her to come outside because the Officers were looking for Darin, who may be armed. According to Officer Dickey, Daugherty responded "Who the fuck are you to have a gun in my backyard?!" Daugherty also allegedly stated "You wanna gun, I'll show you a fuckin gun!" Officer Dickey alleges that Daugherty started to walk down basement steps, prompting him to enter the home using the backdoor and yell repeatedly for Daugherty to "stop." Daugherty stopped more than half-way down the stairs after Officer Dickey commanded "Stop or I'm going to shoot you with the taser." Officer Dickey testified that, after he ordered her to come up the stairs, she started walking up the stairs and yelling "get out of my house." Officer Dickey attested that Daugherty then charged him, holding keys in her right hand which she raised above her head in a threatening manner. Officer Dickey testified that he first tasered Daugherty at the top of the landing as he was backing up through the backdoor. The first taser delivered a five second shock, or "cycle." Officer Dickey testified that he gave Daugherty a second and third one-second shock to get Daugherty to drop the keys and stop struggling for purposes of handcuffing. Officer Dickey denied recycling the taser the second or third time to coerce Daugherty into telling him where her son was located in the home.

B. Daugherty

Daugherty testified that she entered the house at Officer Burley's direction, yelling her kids' names and finding that no one was on the first floor of the ranch home. Daugherty attests that she walked through the livingroom and into the kitchen, then turned to enter the basement when she saw Officer Dickey standing in the backyard. Daugherty attests that Officer Dickey was pointing a handgun at her, and she asked him why. Daugherty admits it was possible that she said "who the fuck are you to have a gun in my backyard?" Daugherty denied, however, ever threatening to get a gun, or any other type of weapon. Daugherty testified that Officer Dickey starting yelling at her "who's in the house," and she responded as she stood on a basement stair that she did not know. Daugherty testified that Officer Dickey ordered her to "get up here" and "get on the ground," and told her she was under arrest. Daugherty asked Officer Dickey what he was talking about and, as she remained on the basement stairs, he shot her with the taser. Daugherty attests that she was yelling and screaming for Officer Dickey to stop as she moved from the third step to the kitchen and laid on the floor. Daugherty testified that Officer Dickey then repeatedly asked her who was in the house, and when she said she didn't know, he administered a second tasing. Daugherty testified that Officer Dickey again asked her who was in the house, and when she said she didn't know, he administered the third shock. Daugherty remembered having keys in her hand after the first tasing, but could not recall whether they were in her hand after the second tasing. Daugherty denied raising the keys above her head or attempting to strike Officer Dickey.

C. DVD

*3 Daugherty submits as evidence a DVD containing audio/video recordings taken from two patrol cars. The recordings were taken outside the home, and contain no video of the confrontation between Daugherty and Officer Dickey. Daugherty relies on the DVD, which contains: (1) audio of the arrest from Officer Scott Burley's uniform microphone; and (2) a conversation among Officer Dickey, Officer Burley, and Daugherty as she was being transported to jail.

Carefully listening to the DVD, the taser can be heard firing, followed by a loud scream. Officers are heard shouting "go, go, go, go, go, go." Officer Dickey, presumably, is heard asking "are you done yet? are you done?" followed by "don't you fuckin move-you're under arrest," "drop those keys," "get down on the ground," and "did I tell you to get up?" After a pause, Officer Dickey can be heard asking "where's he at?" After another pause, Officer Dickey states: "I swear to God you make one more move and I am going to light you up again." Officer Dickey is then heard saying "put your hands behind your back, you're under arrest."

III. Standard of Review

Federal Rule of Civil Procedure 56(c) empowers the court to render summary judgment "forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *See* Redding v. St. Eward, 241 F.3d 530, 532 (6th Cir.2001). The standard for determining whether summary judgment is appropriate is " 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.' " *Amway Distributors Benefits Ass'n v. Northfield Ins. Co.*, 323 F.3d 386, 390 (6th Cir.2003) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The evidence and all reasonable inferences must be construed in a light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *Redding*, 241 F.3d at 532 (6th Cir.2001). If the movant establishes by use of the material specified in Rule 56(c) that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law, the opposing party must come forward with "specific facts showing that there is a genuine issue for trial." *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 270, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968); *see also McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir.2000). Mere allegations or denials in the non-movant's pleadings will not meet this burden, nor will a mere scintilla of evidence supporting the non-moving party. *Anderson*, 477 U.S. at 248, 252. Rather, there must be evidence on which a jury could reasonably find for the non-movant. *McLean*, 224 F.3d at 800 (citing *Anderson*, 477 U .S. at 252).

IV. Defendants' Motion for Summary Judgment

*4 In moving for summary judgment, Officer Dickey relies on qualified immunity. In resolving the issue of qualified immunity on summary judgment, courts are required to engage in a two-step decisional process: (1) whether the plaintiff has shown sufficient facts to make out a violation of a constitutional right; and (2) whether the constitutional right was "clearly established" at the time of the alleged misconduct. *Pearson v. Callahan*, ---U.S. ----, ---- - ----, 129 S.Ct. 808, 815-16, 172 L.Ed.2d 565 (2009) (citing *Saucier v. Katz*, 533 U.S. 194, 121, 121 S.Ct. 2151, ----, 150 L.Ed.2d 272, ---- (2001)). "The relevant, dispositive inquiry in determining whether a right was clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Klein v. Long*, 275 F.3rd 544, 550 (6th Cir.2001) (quoting *Saucier*, 533 U.S. at 533 U.S. 194, 121 S.Ct. 2151, at 2156, 150 L.Ed.2d 272). The plaintiff bears the ultimate burden of proving "that the defendant's conduct violated a right so clearly established that a reasonable official in his position would have clearly understood that he or she was under an affirmative duty to refrain from such conduct." *Sheets v. Mullins*, 287 F.3d 581, 586 (6th Cir.2002). A district court enjoys "discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 129 S.Ct. at 818.

A. Handcuffing (Arrest) Without Probable Cause

An arrest without probable cause clearly violates that Fourth Amendment. *Klein*, 275 F.3rd at 550. Probable cause to arrest exists if the facts and circumstances within the officer's knowledge were

sufficient "to warrant a prudent man in believing that the [arrestee] had committed or was committing an offense." *Id.* at 550 (quoting *Donovan v. Thames,* 105 F.3d 291, 298 (6th Cir.1997)). "[A]n individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a [police officer] who the individual knows or has reason to know is performing his or her duties is guilty of a felony ...." M.C.L. §§ 750.81 d(1); (7)(b)(i).

Construing the pleadings and evidence in a light most favorable to Daugherty, reasonable jurors could disagree whether Officer Dickey had probable cause to arrest and handcuff Daugherty. As reasoned in *Bourgeois v. Strawn,* 501 F.Supp.2d 978 (E.D.Mich.2007), although Michigan law provides that a person may not resist an unlawful order, police cannot, consistent with the Fourth Amendment, manufacture grounds to arrest an innocent person simply "by telling him to leave his home without any lawful authority to do so, then arrest him for violating that directive." *Id.* at 987. In *Bourgeois,* the police possessed an arrest warrant for an individual believed to be living in Bourgeois' home. After Bourgeois motioned police officers to the back door from inside his home, Bourgeois was confronted at the back door by officers training their guns on him and yelling "Get out here and lay on the ground." *Id.* at 983. Bourgeois did not comply with the order, and instead pulled back as one of the officers tried to grab him. *Id.* After the officers denied Bourgeois' invitation to enter the home, and again commanded him to exit the house and get on the ground, Bourgeois admittedly "made profane comments regarding the pointing of guns at his home." *Id.* Bourgeois was then ordered to "go in" and get the individual police were seeking, and he complied. Citing *Groh v. Ramirez,* 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) and *Payton v. New York,* 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) for the proposition that the police could not have lawfully entered the home and removed Bourgeois without judicial authority, District Judge Lawson concluded that Bourgeois' refusal to comply with the officer's commands to "get out here and lay on the ground" could not support a violation of M.C.L. § 750.81 d(1), the statute at issue here, because Bourgeois' refusal to exit his own home amounted to no crime supporting probable cause to arrest. *Id.* at 987-88.

***5** Officer Dickey testified that he ordered Daugherty to leave her home, and that Daugherty refused. Daugherty testified that Officer Dickey ordered her to come up the basement steps and get on the ground because she was under arrest. Daugherty denied threatening Officer Dickey and saying "You wanna gun, I'll show you a fuckin gun." Daugherty's profane statement of "who the fuck are you to have a gun in my backyard?" did not give Officer Dickey probable cause to order Daugherty from her home, arrest Daugherty for resisting arrest under M.C.L. § 750.81d(1), or probable cause to enter Daugherty's kitchen. *Bourgeois,* 501 F.Supp.2d at 983, 987-88. According to Daugherty's testimony, Officer Dickey announced that she was under arrest and shot her with the first taser after Daugherty refused to leave her home by simply remaining on the stairs and questioning Officer Dickey as to why she was under arrest. Under this scenario, reasonable jurors could conclude that Officer Dickey did not have probable cause to arrest Daugherty under M.C.L. § 750.81d(1), or to apply the initial taser cycle to assist in an arrest. Daugherty denied resisting Officer Dickey after she was first tased, testifying that she was instead yelling and screaming for Officer Dickey to stop as she moved from the basement steps of her home to the kitchen where she laid down as instructed by Officer Dickey. Daugherty testified that Officer Dickey applied the second and third tasings in attempts at coercing her into telling him where Darin was in the house, not to eliminate her resistance to arrest.

The DVD recordings are inconclusive. Whether Daugherty threatened Officer Dickey with a potential gun and charged him with keys clinched in her fist is a question of fact for the jury to decide. Construing the deposition testimony in a light most favorable to Daugherty, and consistent with the reasoning in *Bourgeois,* 501 F.Supp.2d at 983, 987-88, reasonable jurors could disagree whether Officer Dickey arrested Daugherty without probable cause in clear violation of the Fourth Amendment, and whether a reasonable officer in Officer Dickey's position would have clearly understood that he was under an affirmative constitutional duty not to arrest Daugherty for violating M.C.L. § 750.81 d(1). *Pearson,* 129 S.Ct. at 815-16; *Klein,* 275 F.3d at 550; *Sheets,* 287 F.3d at 586. Defendant Officer Dickey's motion for summary judgment as to Daugherty's § 1983 claim that she was handcuffed and arrested without probable cause in violation of the Fourth and Fourteenth Amendment will be denied. *Amway Distributors,* 323 F.3rd at 390; *Matsushita Elec.,* 475 U.S. at 587; *Redding,* 241 F.3rd at 532.

B. Excessive Force

A claim that a city police officer used excessive force during an arrest is governed by the Fourth Amendment. *Graham v. Connor,* 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989). Fourth Amendment jurisprudence recognizes "that the right to make an arrest ... necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Id.* at 396 (citing *Terry v. Ohio,* 392 U.S. 1, 22-27, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation." *Id.* at 396-397. The reasonableness of an officer's use of force is "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396 (citing *Terry,* 392 U.S. at 20-22)). "[T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397 (citing *Terry,* 392 U.S. at 21, and *Scott v. United States,* 436 U.S. 128, 137-139, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978)). "An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional." *Id.* at 397 (citing *Scott,* 436 U.S. at 138).

***6** A gratuitous use of force on a suspect who has already been subdued violates the Fourth Amendment. *Roberts v. Manigold,* 240 Fed. App'x 675, 677 (6th Cir. June 14, 2007) (finding jury question where record supported a finding that the plaintiff was "completely pinned" by a 225-pound officer, a former U of M football player, when the officers's partner continued to taser the plaintiff). When carefully analyzing the facts and circumstances of a given case, the court should consider the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest. *Id.* at 677 (quoting *Graham,* 490 U.S. at 396).

Consistent with the analysis in Section IV, A, *supra,* reasonable jurors could disagree whether Officer Dickey's use of his taser on Daugherty was objectively reasonable under the facts of this case. The DVD recordings are inconclusive. If the jury believes Daugherty's version of the events, Officer Dickey did not have probable cause to believe that Daugherty was resisting arrest in violation of M.C.L. § 750.81 d(1), Daugherty did not pose an immediate threat to the safety of the Officer Dickey or others, Daugherty was not actively resisting arrest, and Officer Dickey applied the second and third tasings in a gratuitous manner to coerce Daugherty into telling him where her son was located within her home. *Roberts,* 240 Fed. App'x at 677. A question remains whether Officer Dickey had the right to enter and arrest Daugherty within her home, let alone to apply taser force in accomplishing the arrest. *Graham,* 490 U.S. at 395. Whether Officer Dickey's actions in tasing Daugherty were objectively reasonable in light of the facts and circumstances confronting him remains for a jury to decide, as does whether a reasonable officer in Officer Dickey's position would have clearly understood that he was under an affirmative constitutional duty to refrain from tasing Daugherty. *Id; Pearson,* 129 S.Ct. at 815-16; *Klein,* 275 F.3d at 550; *Sheets,* 287 F.3d at 586. The fact that Daugherty did not suffer a sustained injury is not dispositive of her constitutional claims. Accordingly, defendant Officer Dickey's motion for summary judgment as to Daugherty's § 1983 claim that he applied excessive force in violation of the Fourth and Fourteenth Amendment will be denied. *Amway Distributors,* 323 F.3rd at 390; *Matsushita Elec.,* 475 U.S. at 587; *Redding,* 241 F.3rd at 532.

C. Malicious Prosecution

"When a § 1983 claim is predicated on an allegation of false arrest, false imprisonment, or malicious prosecution, such claim must fail if probable cause for arrest exists." *Scott v. City of Bexley,* 11 Fed. App'x 514, 516 (6th Cir. May 24, 2001) (quoting *Hansel v. Bisard,* 30 F.Supp.2d 981, 985-86 (E.D.Mich.1998)). This is true "regardless of whether the defendant had malicious motives for arresting the plaintiff." *Id.* As set forth in Section IV, A, *supra,* a question of fact remains whether Officer Dickey had probable cause to arrest Daugherty for violating M.C.L. § 750.81d(1).

***7** Officer Dickey cites *Skousen v. Brighton High School,* 305 F.3d 520, 529 (6th Cir.2002) for the proposition that he cannot be held liable for malicious prosecution because the Roseville prosecutor's office, not he, made the decision to prosecute Daugherty. Before reaching the conclusion that the

officer in *Skousen* could not be held liable for malicious prosecution, the Sixth Circuit panel found that there was probable cause to arrest and prosecute, and that there was no evidence that the officer had presented untruthful evidence or had testified untruthfully at trial. *Id.* Here, Officer Dickey's complaint and trial testimony that Daugherty threatened "You wanna gun, I'll show you a fuckin gun!" formed the basis of Daugherty's criminal prosecution, and remain subject to a truthfulness challenge in this lawsuit. The court does not read *Skousen* to foreclose a claim of malicious prosecution where there is evidence that the arresting officer lacked probable cause to arrest and caused a criminal prosecution to proceed based on the officer's knowingly false testimony. It remains reasonably disputed whether Officer Dickey's allegedly false accusations "caused" Daugherty to be prosecuted. *Id.* at 529. Whether a reasonable officer in Officer Dickey's position would have clearly understood that he was under an affirmative constitutional duty to refrain from allegedly making false allegations likewise remains subject to reasonable dispute. *Id; Pearson,* 129 S.Ct. at 815-16; *Klein,* 275 F.3d at 550; *Sheets,* 287 F.3d at 586. Accordingly, defendant Officer Dickey's motion for summary judgment as to Daugherty's § 1983 claim that Officer Dickey maliciously prosecuted her in violation of the Fourth and Fourteenth Amendment will be denied. *Amway Distributors,* 323 F.3rd at 390; *Matsushita Elec.,* 475 U.S. at 587; *Redding,* 241 F.3rd at 532.

D. Municipal Liability

In opposing summary judgment with respect to defendant Roseville, Daugherty argues: (1) Officer Dickey was only suspended for three days after filing a false police report that he was involved in a minor traffic accident with his patrol car in the City of Roseville, when in fact the accident occurred outside of Roseville; (2) Officer Dickey was previously sued by a woman who alleged that Officer Dickey tasered her while she was still handcuffed; and (3) the City of Roseville did not follow up on Daugherty's citizen's complaint after she was acquitted of the criminal charges.

To prevail on her claim that City of Roseville is liable, Daugherty must prove that Officer Dickey's actions were the product of an unconstitutional policy, custom, or practice of "deliberate indifference" to her constitutional rights. *Oklahoma v. Brown,* 520 U.S. 397, 405, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997) (citing *Canton v. Harris,* 489 U.S. 378, 389, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989) and *Monell v. New York City Dept. of Social Servs.,* 436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). A municipality may not be held liable under § 1983 unless its deliberate action was the "moving force" behind the plaintiff's deprivation of federal rights. *Id.* (citing *Monell,* 436 U.S. at 694). "[R]igorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." *Brown,* 520 U.S. at 405 (citing *Canton,* 489 U.S. at 391-392). A municipality may be held liable for a failure to supervise if the municipality was put on notice that a program did not prevent constitutional deprivations yet continued to take the same approach in deliberate indifference to continuing constitutional violations, that is, a continuous pattern of tortious conduct as opposed to an officer being involved in a single tortious event. *Id,* at 408. A single incident may support a finding of "deliberate indifference" where a "highly predictable consequence" results from the officer's obvious lack of specific tools to handle a situation arising from a deliberate indifference to train. *Id,* at 409, 410. "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality ... can a city be liable for such a failure under § 1983." *Canton,* 489 U.S. at 391. In the context of an alleged failure to discipline, the applicable "deliberate indifference" standard requires "a showing of a history of widespread abuse that has been ignored by the City." *Berry v. City of Detroit,* 25 F.3d 1342, 1354 (6th Cir.1994) (citing *Canton,* 489 U.S. at 397 (O'Connor, J., concurring in part and dissenting in part)). An alleged policy of inaction "must reflect some degree of fault before it may be considered a policy upon which § 1983 liability may be based." *Garretson v. City of Madison Hgts.,* 407 F.3d 789, 796 (6th Cir.2005).

***8** Construing the pleadings and evidence in a light most favorable to Daugherty, reasonable jurors could not conclude that a City of Roseville policy, custom, or practice was the "moving force" behind Officer Dickey's alleged constitutional violations. Reasonable jurors could not conclude from Officer Dickey's filing of a false police report related to a minor motor vehicle accident that Roseville was put on notice that Officer Dickey would file subsequent false police reports against citizens accusing them of crimes they did not commit or to cover up his use of excessive force. Officer Dickey filed a false report that a traffic accident in his patrol car happened within the City of Roseville to cover-up the fact that the accident actually occurred at a fellow Officer's house outside the City limits where Officer Dickey dropped in at a party while on duty. Officer Dickey's willingness to stage the

accident within City limits, although disturbing, does not raise a reasonable inference that City of Roseville was now on notice that Officer Dickey would file false complaints against citizens to cover-up his foreseeable use of excessive force. *Brown,* 520 U.S. at 405, 408. It is undisputed that Officer Dickey was disciplined for filing the false report.

Officer Dickey's involvement in a prior lawsuit accusing him of tasering a female suspect while she was still handcuffed also fails to raise a reasonable inference that Roseville adopted a policy of deliberate indifference towards Officer Dickey's alleged use of excessive force. Daugherty admits that Roseville changed it policy with respect to the use of a taser on secured prisoners after this prior incident. The lawsuit was eventually settled without factual findings as to whether or not Officer Dickey had in fact gratuitously applied his taser. The record does not raise a reasonable inference that Roseville unreasonably believed Officer Dickey's version of the events, and made a conscious choice of deliberate indifference toward whether Officer Dickey would, in the future, apply excessive force using a taser. *Canton,* 489 U.S. at 391. Daugherty has not proffered evidence of a history of widespread abuse involving Roseville Police Officers which was ignored by the City. *Berry,* 25 F.3d at 1354. The fact that Officer Dickey was previously sued for applying excessive force with a taser, and that the lawsuit settled, does not meet the rigorous standards of culpability and causation for demonstrating that a Roseville policy, custom, or practice was the moving force behind Officer Dickey's instant alleged constitutional violations. *Brown,* 520 U.S. at 405.

The record does not support a finding that Roseville failed to follow-up on Daugherty's citizen complaint after she was acquitted. Daugherty's acquittal following a state court jury trial establishes only that the evidence proffered at the criminal trial did not establish beyond all reasonable doubt that Daugherty had resisted arrest in violation of M.C.L. § 750.81d(1). It is undisputed that Roseville Officers continued their attempts to contact Daugherty after her acquittal, but to no avail. Daugherty testified that she moved from 26201 Compson in Roseville to Ray, Michigan, shortly after the July 1, 2007 incident. Daugherty was acquitted on March 6, 2008. Construing the record evidence in a light most favorable to Daugherty, reasonable jurors could not conclude that, with some degree of fault, Roseville ceased investigating Daugherty's citizen complaint after her acquittal. *Garretson,* 407 F.3d at 796. Daugherty's argument that Roseville condoned Officer Dickey's alleged constitutional violations is not reasonably supported on this record.

***9** Reviewing the evidence proffered to support the claim that City of Roseville adopted a requisite policy, custom, or practice of deliberate indifference towards Daugherty's constitutional rights, reasonable jurors could not conclude that City of Roseville is liable for the alleged acts of Officer Dickey. *Monell,* 436 U.S. at 694; *Matsushita Elec.,* 475 U.S. at 587; *Amway Distributors,* 323 F.3d at 390. City of Roseville is entitled to summary judgment as a matter of law. *Id.*

V. Conclusion

For the reasons set forth above, defendants' motion for summary judgment is hereby GRANTED, IN PART, to the extent plaintiff Daugherty alleges municipal liability against defendant City of Roseville. Count II alleging § 1983 municipal liability against City of Roseville is hereby DISMISSED with prejudice. Defendants' motion for summary judgment is hereby DENIED, IN PART, to the extent Daugherty alleges Officer Dickey is liable under § 1983 for arresting Daugherty without probable cause, applying excessive force, and maliciously prosecuting in violation of the Fourth and Fourteenth Amendments.

SO ORDERED.

E.D.Mich.,2009.
Daugherty v. Dickey
Slip Copy, 2009 WL 2849118 (E.D.Mich.)

Motions, Pleadings and Filings (Back to top)

• 2009 WL 5066949 (Trial Motion, Memorandum and Affidavit) Plaintiff's Motion for Reconsideration of the Order Granting in Part Defendants' Motion for Summary Judgment (Sep. 10, 2009) Original

Image of this Document (PDF)
• 2009 WL 5066948 (Trial Motion, Memorandum and Affidavit) Answer Opposing Defendants' Motion for Summary Judgment (Jun. 22, 2009) Original Image of this Document (PDF)
• 2009 WL 5066947 (Trial Motion, Memorandum and Affidavit) Defendants Roseville Police Officer Matthew Brian Dickey, Badge No.239 and the City of Roseville's Motion for Summary Judgment (May 29, 2009) Original Image of this Document (PDF)
• 2008 WL 7321933 (Trial Motion, Memorandum and Affidavit) Plaintiff's Motion to Compel Requested Documents and Certificate of Service (Jun. 30, 2008) Original Image of this Document (PDF)
• 2008 WL 7321932 (Trial Pleading) Complaint for Damages and Jury Demand (Mar. 25, 2008) Original Image of this Document (PDF)
• 2:08cv11287 (Docket) (Mar. 25, 2008)

Judges and Attorneys (Back to top)

Judges | Attorneys

Judges

• **Steeh, Hon. George Caram**
United States District Court, Eastern Michigan
Michigan
Litigation History Report | Judicial Motion Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

---

Attorneys

Attorneys for Defendant

• **Peacock, Peter W.**
Mt. Clemens, Michigan
Litigation History Report | Profiler

Attorneys for Plaintiff

• **Loeb, Thomas M.**
Farmington Hills, Michigan
Litigation History Report | Profiler

END OF DOCUMENT